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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A146701

v.

DUANE SCOTT JOACHIM,

**(Napa County
Super. Ct. No. CR157106)**

Defendant and Appellant.

_____ /

Duane Scott Joachim appeals from the trial court's denial of his petition to reduce his receiving stolen property conviction (Pen. Code, § 496, subd. (a))¹ from a felony to a misdemeanor pursuant to section 1170.18. Having reviewed the record as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we find no arguable appellate issue and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2011, law enforcement officers investigating a residential burglary arrested Joachim and seized \$6,647 from his wallet. As relevant here, the prosecution charged Joachim with receiving stolen property (§ 496, subd. (a)) and alleged a prior conviction

¹ Unless noted, all further statutory references are to the Penal Code.

(§ 667.5, subd. (b)). In 2012, a jury convicted Joachim of receiving stolen property (§ 496, subd. (a)) and he admitted the sentencing enhancement (§ 667.5). The court sentenced Joachim to two years in state prison.² In 2014 — and pursuant to the parties’ stipulation — the court returned \$3,000 to its owner, K.B., \$1,050 to the California Service Bureau, and \$2,397 to Joachim.

In 2015, Joachim petitioned in propria persona to have his conviction reduced to a misdemeanor pursuant to Proposition 47, claiming the value of the stolen property did “not exceed \$950[.]” (§§ 490.2, 1170.18, subd. (a)). The prosecution opposed the motion. Relying in part on this court’s opinion in *People v. Joachim* (Apr. 12, 2013, A135323) [nonpub. opn.], the prosecution argued Joachim was “in possession of at least \$3000 in stolen money” when he was arrested. The court appointed an attorney for Joachim and set a hearing date. At the hearing, Joachim’s attorney “submit[t]ed” and the court denied the petition “based upon the amount that was involved.”

DISCUSSION

Joachim appealed. His appointed counsel filed an opening brief raising no issues pursuant to *Wende*. Counsel informed Joachim he had the right to file a supplemental brief on his own behalf but Joachim declined to do so. We have reviewed the record pursuant to *Wende* and find no reasonably arguable appellate issue. Joachim, who was ably represented by counsel, did not satisfy his burden to establish the value of the stolen property did not exceed \$950. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 878-880; *People v. Perkins* (2016) 244 Cal.App.4th 129, 137.) An appellate opinion is part of the record of conviction and may be considered in reviewing denial of resentencing. (See *People v. Guilford* (2014) 228 Cal.App.4th 651, 659-660.)

² Case numbers CR15706 and CR159624 were consolidated for trial. Joachim appealed from the conviction and this court affirmed. (*People v. Joachim* (Apr. 12, 2013, A135323) [nonpub. opn.].)

DISPOSITION

The denial of Joachim's petition for resentencing (§ 1170.18) is affirmed.

Jones, P.J.

We concur:

Simons, J.

Needham, J.